

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

[illegible]

Docket No. 179,072

ORDER

American Family Insurance Company and Richard Henderson request review of the Order of Administrative Law Judge George R. Robertson entered in this proceeding on April 18, 1995.

ISSUES

The Administrative Law Judge granted the Workers Compensation Fund's motion to dismiss, but denied the request of dismissal made by American Family Insurance Company and Richard Henderson. Both American Family Insurance Company and Richard Henderson request the Appeals Board to review the denial of their requests by the Administrative Law Judge. By brief, the claimant raises the issue whether the Workers Compensation Fund should have been dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board, for purposes of this preliminary matter, finds that it does not have jurisdiction at this juncture to review the Administrative Law Judge's denial to dismiss American Family Insurance Company and Richard Henderson. However, the Appeals Board does have jurisdiction to review the issue whether the Workers Compensation Fund should have been dismissed from the proceeding.

Because of the nature of a Motion to Dismiss, a decision denying the request is interlocutory in nature and subject to modification either before or at the time of final award. Under K.S.A. 44-551 and 44-534a, the Appeals Board does not have jurisdiction to review interlocutory orders of an administrative law judge unless the issue is either one of those specifically enumerated in K.S.A. 44-534a or the administrative law judge has exceeded his or her jurisdiction. The issues raised by American Family Insurance Company and Richard Henderson are not jurisdictional issues listed in K.S.A. 44-534a. Further, the Administrative Law Judge has not exceeded his jurisdiction by refusing to dismiss parties from the proceeding when significant questions of their liability remain and evidence relating to those questions may be introduced until the case has been fully submitted.

A different conclusion must be reached regarding the issue of dismissal of the Workers Compensation Fund. Because dismissal of a party from a proceeding is final in nature, the Appeals Board has jurisdiction to review that finding as any other final order or decision issued by an administrative law judge. K.S.A. 44-566a(c)(2) grants an administrative law judge authority to dismiss the workers compensation fund where there is "insufficient evidence to indicate involvement by the workers compensation fund."

Based upon the present state of the record, the Appeals Board finds there is a legitimate question whether the respondent, H-J Disaster Service, has workers compensation insurance coverage and, likewise, a legitimate question whether respondent has the financial ability to pay an award of benefits. At this stage of the proceeding, it cannot be said that there is "insufficient evidence to indicate involvement by the workers compensation fund." Although we do not intend to influence the decision of the Administrative Law Judge at time of final award, the Appeals Board finds there is some evidence to indicate that the Workers Compensation Fund may be found responsible for the payment of the award under K.S.A. 44-532a and would point out the record is not yet complete. Additional evidence may be presented of this question.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge George R. Robertson entered in this proceeding on April 18, 1995, should be modified; that the Order to dismiss the Workers Compensation Fund should be, and hereby is, reversed; and that the Order denying dismissal of American Family Insurance Company and Richard Henderson remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of August, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John T. Bird, Hays, Kansas
Don C. Staab, Hays, Kansas
Melvin J. Sauer, Jr., Hays, Kansas
Steven P. Flood, Hays, Kansas
Richard L. Friedeman, Great Bend, Kansas
George R. Robertson, Administrative Law Judge
Philip S. Harness, Director